

**REPUBLIC OF LITHUANIA**

**LAW**

**ON COMPETITION**

23 March 1999 – No VIII-1099

(As last amended on 24 September 2009 – No XI-434)

Vilnius

**CHAPTER I**

**GENERAL PROVISIONS**

**Article 1. Purpose of the Law**

1. The purpose of this Law is to protect freedom of fair competition in the Republic of Lithuania.

2. This Law shall regulate the activities of entities of public administration and undertakings, which restrict or may restrict competition as well as acts of unfair competition, shall establish the rights, duties and liabilities of the said authorities and undertakings and the legal basis for the control of restriction of competition and unfair competition in the Republic of Lithuania.

3. This Law seeks to harmonise the Lithuanian and the European Union law regulating competition relations.

4. The provisions of this Law shall implement the EU legal act specified in the Annex to this Law.

**Article 2. Application of the Law**

1. This Law shall prohibit undertakings from performing acts which restrict or may restrict competition, regardless of the character of their economic activity, except in cases where this Law or laws governing individual areas of economic activity provide for exemptions.

2. This Law shall also apply to the activities of undertakings registered outside the territory of the Republic of Lithuania if the said activities restrict competition on the domestic market of the Republic of Lithuania.

3. This Law shall not apply to the activities of undertakings which restrict competition on foreign markets, unless international agreements to which the Republic of Lithuania is a party provide otherwise.

4. Where international agreements ratified by the Seimas of the Republic of Lithuania establish different requirements to protect competition, the provisions of the said agreements shall apply.

### **Article 3. Definitions**

1. “**Economic activity**” means any type of manufacturing, commercial, financial or professional activities, associated with purchase or sale of goods, except for acquisitions by natural persons intended for personal and household needs.

2. “**Goods**” means any object of purchase or sale, including all kinds of services and works, rights or securities. Purchase or sale represents transfer or acquisition of goods based on the contracts of purchase and sale, supply, contracts of independent work or other transactions. Articles (property) transferred under the lease or loan for use contracts shall be comparable to goods.

3. “**Restriction of competition**” means any acts which prevent competition in a relevant market or may weaken, distort or otherwise have a negative effect on competition.

4. “**Undertaking**” means an enterprise, a combination of enterprises (associations, amalgamations, consortiums, etc.), an institution or an organisation, or other legal or natural persons which perform or may perform economic activities in the

Republic of Lithuania or whose acts affect or whose intentions, if realised, could affect economic activity in the Republic of Lithuania. Entities of public administration of the Republic of Lithuania shall be considered to be undertakings if they engage in economic activity.

5. “**Relevant market**” means the market of certain goods in a certain geographic territory.

6. “**Product market**” means the aggregate of goods, which from the consumers’ point of view are appropriate substitutes according to their properties, application and prices.

7. “**Geographic territory (geographic market)**” means the territory in which the conditions of competition in a relevant product market are in essence similar for all undertakings and which, taking into consideration the said fact, may be distinguished from adjacent territories.

8. “**Conditions of competition**” means various economic parameters of purchase or sale, the most important thereof being prices, discounts and markups or other payments as well as factors affecting them (legal restrictions on economic activity, aid granted by entities of public administration, production technologies and costs, peculiarities of the use and consumption of goods, transportation possibilities, etc.).

9. “**Competitors**” means undertakings which face or may face mutual competition in the same relevant market.

10. “**Agreement**” means contracts concluded in any form (written or oral) between two or more undertakings or concerted practices between undertakings, including decisions made by any combination (association, amalgamation, consortium, etc.) of undertakings or by representatives of such combination.

**Version of paragraph 11 before 1 January 2010:**

11. “**Dominant position**” means the position of one or more undertakings in the relevant market directly facing no competition or enabling to make a unilateral decisive

influence in such relevant market by effectively restricting competition. Unless proved otherwise, an undertaking with the market share of not less than 40 per cent shall be considered to enjoy a dominant position in the relevant market. Unless proved otherwise, each of a group of three or a smaller number of undertakings with the largest shares of the relevant market, jointly holding 70 per cent or more of the relevant market shall be considered to enjoy a dominant position.

**Version of paragraph 11 as of 1 January 2010:**

11. “**Dominant position**” means the position of one or more undertakings in the relevant market directly facing no competition or enabling to make a unilateral decisive influence in such relevant market by effectively restricting competition. Unless proved otherwise, an undertaking (except for an undertaking engaged in retail trade) with the market share of not less than 40 per cent shall be considered to enjoy a dominant position within the relevant market. Unless proved otherwise, each of a group of three or a smaller number of undertakings (except for undertakings engaged in retail trade) with the largest shares of the relevant market, jointly holding 70 per cent or more of the relevant market shall be considered to enjoy a dominant position. Unless proved otherwise, an undertaking engaged in retail trade with the market share of not less than 30 per cent shall be considered to enjoy a dominant position within the relevant market. Unless proved otherwise, each of a group of three or a smaller number of undertakings engaged in retail trade with the largest shares of the relevant market, jointly holding 55 per cent or more of the relevant market shall be considered to enjoy a dominant position.

12. “**Group of associated undertakings**” means two or more undertakings which, due to their mutual control or interdependence and possible concerted practices are considered as one undertaking when calculating joint income and market share. Unless proved otherwise, a group of associated undertakings shall be considered to be comprised of every undertaking concerned and:

1) of undertakings in which, as in the undertaking concerned, the shareholding of one and the same natural person or the same natural persons accounts for 1/4 or more of the authorised capital or carries 1/4 or more of all the voting rights;

2) of undertakings which are subject to joint management or have a joint administrative subdivision with the undertaking concerned or half or more of whose members of supervisory board, administrative board or other management or supervisory body are also members of the management or supervisory bodies of the undertaking concerned;

3) of undertakings in which the shareholding of the undertaking concerned accounts for 1/4 or more of the authorised capital or 1/4 or more of all the voting rights or which have a commitment to co-ordinate decisions relating to their economic activity with the undertaking concerned, or of undertakings in which the responsibility for the meeting of their obligations to third parties has been assumed by the undertaking concerned, or of undertakings which have committed to transfer all or part of their profit or have transferred the right to make use of 1/4 or more of their assets to the undertaking concerned;

4) of undertakings whose shareholding in the undertaking concerned accounts for 1/4 or more of the authorised capital or 1/4 or more of all the voting rights or with which the undertaking concerned has committed itself to co-ordinate decisions relating to its economic activity, or which have assumed the responsibility for meeting the obligations of the undertaking concerned to third parties, or to which the undertaking concerned has committed to transfer all or part of its profit or has granted the right to make use of 1/4 or more of its assets;

5) of undertakings connected directly or indirectly through other undertakings with the undertakings referred to in subparagraphs 1, 2, 3 and 4 of paragraph 12 of this Article in any way specified in subparagraphs 1, 2, 3 and 4 of paragraph 12 of this Article.

13. “**Market share**” means the ratio, expressed as a percentage, of the sales or purchases of an undertaking or a group of associated undertakings to the total sales or purchases in the relevant market.

14. **“Concentration”** means:

1) merger, when one or more undertakings which terminate their activity as independent undertakings are joined to the undertaking which continues its operations, or when a new undertaking is established from two or more undertakings which terminate their activity as independent undertakings;

2) acquisition of control, when one and the same natural person or persons already controlling one or more undertakings, or one or more undertakings, by agreement, jointly set up a new undertaking or gain control over another undertaking by acquiring an enterprise or part thereof, all or part of the assets of the undertaking, shares or other securities, voting rights, by contract or by any other means.

15. **“Control”** means any rights arising from laws or transactions that entitle a legal or natural person to exert a decisive influence on the activity of an undertaking, including:

1) the right of ownership to all or part of the assets of the undertaking or the right to use all or part of such assets;

2) other rights which confer a decisive influence on the decisions or the composition of the undertaking’s personnel.

16. **“Controlling person”** means a legal or natural person having or acquiring the right of control over an undertaking. A controlling person may be a citizen of the Republic of Lithuania, a foreign national or a stateless person, or an undertaking as well as entities of public administration. Spouses, parents and their minor children (adopted children) shall be considered as one controlling person. Where two or more legal or natural persons, acting by agreement, acquire control over an undertaking which is subjected to concentration, each of these legal or natural persons shall be considered a controlling person.

17. **“Decisive influence”** means the situation when the controlling person implements or is in the position to implement his decisions in relation to the economic activity, decisions of the bodies or composition of the personnel of the controlled undertaking.

18. “**Assets of an undertaking**” means tangible fixed assets and other fixed assets used in economic activity.

#### **Article 4. Duty of Entities of Public Administration to Ensure Freedom of Fair Competition**

1. When carrying out the assigned tasks related to the regulation of economic activity within the Republic of Lithuania, entities of public administration must ensure freedom of fair competition.

2. Entities of public administration shall be prohibited from adopting legal acts or other decisions which grant privileges to or discriminate against any individual undertakings or their groups and which give rise to or may give rise to differences in the conditions of competition for undertakings competing in the relevant market, except where the difference in the conditions of competition cannot be avoided when the requirements of the laws of the Republic of Lithuania are complied with.

## **CHAPTER II**

### **RESTRICTIVE PRACTICES**

#### **SECTION ONE**

#### **PROHIBITED AGREEMENTS**

#### **Article 5. Prohibition of Agreements Restricting Competition**

1. All agreements which have the purpose of restricting competition or which restrict or may restrict competition shall be prohibited and shall be void from the moment of conclusion thereof, including:

- 1) agreements to directly or indirectly fix prices of certain goods or other conditions of purchase or sale;

2) agreements to share the product market on a territorial basis, according to groups of buyers or suppliers or in any other way;

3) agreements to fix production or sale volumes for certain goods as well as to restrict technical development or investment;

4) agreements to apply dissimilar (discriminating) conditions to equivalent transactions with individual undertakings, thereby placing them at a competitive disadvantage;

5) agreements to require other undertakings to assume supplementary obligations which, according to their commercial nature or purpose, have no direct connection with the subject of the contract.

2. When concluded between competitors, the agreements listed in subparagraphs 1, 2, 3 and 4 of paragraph 1 of this Article shall be, in all cases, considered as restricting competition.

3. (Repealed on 1 May 2004)

4. This Article may be not applicable to agreements concluded between undertakings which, due to their small influence, cannot substantially restrict competition. The requirements, terms and conditions in respect of such agreements shall be laid down by a relevant resolution of the Competition Council of the Republic of Lithuania (hereinafter referred to as the Competition Council).

### **Article 6. Exemption**

1. Article 5 of this Law shall not apply where the agreement promotes technical or economical progress or improves the production or distribution of goods, and thus creates conditions for consumers to receive additional benefit, also where:

1) the agreement does not impose restrictions on the activity of the parties thereto, which are not necessary for the attainment of the objectives referred to in this Article;



2) the agreement does not afford the contracting parties the possibility to restrict competition in a large share of the relevant market.

2. An agreement complying with the conditions set forth in paragraph 1 of this Article shall be effective from the moment of conclusion thereof (*ab initio*) without any prior decision by the Competition Council. In the event of a dispute concerning the compliance of the agreement with the provisions of paragraph 1 of this Article, the burden of proof concerning the compliance shall fall upon the party to the agreement benefiting from this exemption.

3. The Competition Council shall have the right to pass regulations and define the groups of agreements as well as conditions under which the agreement meets the conditions set forth in paragraph 1 of this Article.

4. The Competition Council may revoke the right of undertakings to take advantage of the exemption provided for in legal acts specified in paragraph 3 of this Article, where it is established that, in certain cases, the effect of the agreement is incompatible with the provisions of paragraph 1 of this Article.

**Article 7.** (Repealed on 1 May 2004)

**Article 8. Individual Exemption**

1. (Repealed on 1 May 2004)

2. (Repealed on 1 May 2004)

3. (Repealed on 1 May 2004)

4. (Repealed on 1 May 2004)

**\*5.** The Competition Council may amend or repeal its resolution to grant an individual exemption if:

1) at least one of the circumstances underlying the adoption of the resolution to grant an individual exemption changed;

2) the resolution to grant an individual exemption was adopted on the basis of incorrect or incomplete information;

3) the parties to the agreement violated a condition or a mandatory obligation of the resolution to grant an individual exemption.

**\*Note.** Paragraph 5 of Article 8 of the Law on Competition shall be valid until the expiry of periods of validity of individual exemptions granted by the Competition Council.

## **SECTION TWO**

### **ABUSE OF A DOMINANT POSITION**

#### **Article 9. Prohibition to Abuse a Dominant Position**

It shall be prohibited to abuse a dominant position within a relevant market by performing any acts which restrict or may restrict competition, limit, without due cause, the possibilities of other undertakings to act in the market or violate the interests of consumers, including:

1) direct or indirect imposition of unfair prices or other conditions of purchase or sale;

2) restriction of trade, production or technical development to the prejudice of consumers;

3) application of dissimilar (discriminating) conditions to equivalent transactions with certain undertakings, thereby placing them at a competitive disadvantage;

4) the conclusion of contract subject to acceptance by the other party of supplementary obligations which, according to their commercial nature or purpose, have no direct connection with the subject of such contract.

## SECTION THREE CONTROL OF CONCENTRATIONS

### Article 10. Notification of Concentration

1. The intended concentration must be notified to the Competition Council and its permission must be obtained where combined aggregate income of the undertakings concerned in the business year preceding concentration is more than LTL 30 million and the aggregate income of each of at least two undertakings concerned in the business year preceding concentration is more than LTL 5 million.

2. The combined aggregate income of the undertakings participating in the concentration shall be interpreted as:

1) the total amount of aggregate income of the undertakings concerned;

2) the total amount of aggregate income of the undertakings where one or more of the undertakings concerned, acting by agreement, acquire another undertaking (an enterprise or part thereof), all or part of the assets of the undertaking or part of its shares which, including all previous acquisitions, constitute 1/4 or more of the authorised capital, or confer 1/4 or more of all the voting rights. Where the undertaking acquiring part of shares in another undertaking belongs to the group of associated undertakings, in calculating the shares being acquired, the shares in this entity that are owned by the undertakings belonging to the same group of associated undertakings shall be included. In the case of acquisition of part of the undertaking (enterprise) or part of the assets of the undertaking, aggregate income and market share shall be calculated proportionately to the part of the property acquired;

3) the total amount of aggregate income of the undertakings subject to concentration, where in one or more of the undertakings one and the same natural person or persons, having the right of control, acquire another undertaking (an enterprise or part thereof), all or part of the assets of the undertaking or part of its shares which, including previous acquisitions, constitute 1/4 or more of the authorised capital or confer 1/4 or more of all the voting rights. When calculating the part of the shares of another undertaking acquired by a natural person or natural persons, the shares owned in

this undertaking by the undertakings controlled by a natural person or the same natural persons as well as by all undertakings belonging to the same group of associated undertakings shall be included. In the case of acquisition of part of the undertaking (enterprise) or part of the assets of the undertaking, aggregate income and market share shall be calculated proportionately to the part of the property acquired;

4) the total amount of aggregate income of the undertakings which, acting by agreement, jointly set up a new undertaking or establish a common management or supervisory body or a common administrative subdivision, or which, due to the decisions taken, will have half or more of the same members in a supervisory board, administrative board or other management or supervisory bodies, or which commit to co-ordinate among themselves decisions concerning their economic activity or to transfer to each other the whole or a certain part of profit, or which confer to each other the right to make use of all or part of their assets, or one or several undertakings of which, acting by agreement, otherwise acquire control of another undertaking. Where one undertaking confers to another undertaking the right to make use of part of its assets, the aggregate income and market share shall be calculated proportionately to the part of the assets used.

3. If the participant in the concentration:

1) (Repealed on 1 May 2004);

2) is an insurance undertaking, the value of gross insurance premiums shall be calculated instead of the aggregate income;

3) are collective investment undertakings or management companies managing them, aggregate income shall be calculated as the total amount of the aggregate income of all the undertakings under the control of the management company, closed-ended investment company or investment company with variable capital, the management of the assets whereof has not been transferred to the management company;

4) is an undertaking which belongs to the group of associated undertakings, the aggregate income shall be calculated as the total amount of the aggregate income of all the undertakings belonging to the group of associated undertakings;

5) is an undertaking of a foreign state, the aggregate income shall be calculated as the total amount of income received on the product markets of the Republic of Lithuania.

4. The Competition Council shall establish the procedure for calculating the aggregate income as applied for the control of concentration.

5. A concentration shall not be deemed to arise where commercial banks, other credit institutions, intermediaries of public trading in securities, collective investment undertakings or management companies managing them and insurance undertakings acquire 1/4 or more of shares in another enterprise with a view to transferring them, provided that they do not exercise the voting right conferred by the shares, and that any such transfer takes place within one year and, the information is submitted to the Competition Council within one month from the acquisition. If the financial institutions which acquired 1/4 or more of shares in another enterprise decide not to comply with the conditions provided for in this paragraph, they must submit a notification of concentration in accordance with the general procedure.

#### **Article 11. Submission of Notification**

1. Notification of concentration in the cases referred to in subparagraphs 2 and 3 of paragraph 2 of Article 10 of this Law shall be submitted by the controlling persons; in other cases, notification shall be submitted jointly by all undertakings participating in concentration.

2. A concentration shall be notified to the Competition Council prior to the implementation of the concentration. The notification shall be made after the submission of the proposal to conclude the agreement, acquire the shares or assets, an instruction to conclude the agreement, conclusion of the agreement, acquisition of the right of ownership or the right to dispose of certain assets. The notification may also be made in case of a good faith intention to conclude the agreement or to make a public bid to buy up shares. The Competition Council shall establish the standard form of notification of concentration.

3. The notification of concentration must include:

- 1) registration data of the undertakings participating in concentration;
- 2) reasons and purposes of concentration;
- 3) description of the manner of concentration;
- 4) annual financial accounts of each undertaking participating in concentration, for the last three years prior to concentration;
- 5) data on the enterprises owned by each undertaking participating in concentration or the enterprises owned by controlling persons as well as data on the enterprises the holders of interests or member shares of which they are;
- 6) purchase and sale volumes of each undertaking participating in concentration for the last three years prior to concentration and evaluation of their market share in a relevant market;
- 7) a list of the major purchasers and suppliers as well as the main competitors in the relevant markets of each undertaking participating in concentration.

4. Where a notification of intended concentration with participation of an undertaking belonging to a group of associated undertakings is submitted, the data on all the undertakings belonging to the group of associated undertakings shall be submitted pursuant to the requirements of paragraph 3 of this Article.

5. Where notification of intended concentration is with participation of banks or other credit institutions, a conclusion of the Bank of Lithuania shall also be submitted to the Competition Council.

6. The notification of concentration must be accompanied by documents, confirming that the undertakings concerned have paid a fee in the amount established by the Government for the submission and examination of the notification.

## **Article 12. Suspension of Concentration**

1. The undertakings or controlling persons participating in the concentration which is subject to notification shall have no right to implement the concentration until the resolution of the Competition Council is passed in accordance with subparagraphs 1 or 2 of paragraph 1 of Article 14 of this Law.

2. All transactions and acts of the undertakings and controlling persons shall be held invalid and not creating any legal consequences if they contradict paragraph 1 of this Article, except in cases provided for in paragraph 3 of this Article.

3. Upon a justified request of the undertakings participating in concentration or of the controlling person, the Competition Council, taking into account the consequences of the suspension of concentration on the persons concerned and the envisaged effect of concentration on competition, may permit to perform individual actions of concentration. The permission of the Competition Council to perform individual actions of concentration may be granted subject to certain conditions and obligations necessary to ensure effective competition.

### **Article 13. Examination of Notifications by the Competition Council**

1. Having received a notification of concentration, the Competition Council shall publish an announcement hereof in the official gazette *Valstybės žinios*, specifying the nature of concentration and the parties concerned.

2. The Competition Council shall, within four months, examine notifications of concentration submitted in accordance with the established requirements. The term shall begin on the day following the receipt of the notification of concentration, which complies with the established requirements. If the notification of concentration does not comply with the established requirements, the Competition Council shall promptly inform thereof in writing the persons who submitted the notification.

3. The Competition Council must, within a month after the receipt of the notification of concentration meeting the established requirements, adopt a resolution pursuant to subparagraphs 1 or 2 of paragraph 1 of Article 14 or a resolution to proceed with further examination of the notification of concentration.

4. The Competition Council, intending to pass a resolution in accordance with subparagraph 2 of paragraph 1 of Article 14, upon a justified request of the person submitting the notification, may extend the term for the examination of the concentration referred to in paragraph 2 of this Article by one month.

5. When examining notifications of concentration, the Competition Council shall be entitled to obtain from undertakings, controlling persons and entities of public administration any information, oral and written clarifications necessary for adopting a resolution on concentration.

#### **Article 14. Resolutions of the Competition Council on Concentrations**

1. Upon completing the examination of the notification of concentration, the Competition Council shall adopt one of the following decisions:

1) to permit the implementation of concentration in accordance with the submitted notification;

2) to permit the implementation of concentration in accordance with the conditions and obligations established by the Council for the participating undertakings or controlling persons in order to prevent creation or strengthening of a dominant position or a substantial restriction of competition in a relevant market;

3) to refuse to grant permission to implement concentration and impose an obligation on the undertakings or controlling persons concerned to perform actions restoring the previous condition, except certain actions of concentration which had been permitted by the Competition Council in accordance with paragraph 3 of Article 12 or which eliminate the consequences of concentration, including obligations to sell the enterprise or part thereof, the assets of the undertaking or part thereof, the shares or part thereof, to cancel or amend contracts, as well as to establish the terms and conditions for the fulfilment of the above obligations, where concentration will create or strengthen a dominant position or substantially restrict competition in a relevant market.

2. The resolution of the Competition Council permitting to implement concentration shall specify possible restrictions of activity of the undertakings



concerned, which are directly related and necessary in order to implement concentration.

3. The persons who submitted notifications of concentration shall be informed of the adopted resolutions in writing. If the Competition Council does not adopt resolutions referred to in paragraph 2 of Article 13 or paragraph 1 of this Article, or if the persons who submitted notifications of concentration are not informed of the adopted resolution within four months after the day of receipt of the notification meeting the established requirements, the undertakings or controlling persons shall have the right to implement concentration in accordance with the conditions specified in the notification of concentration.

4. The operative part of resolutions adopted by the Competition Council pursuant to Article 14 of this Law shall be published in the official gazette *Valstybės žinios*.

#### **Article 14<sup>(1)</sup>. Application of the Concentration Control Procedure by Own Initiative**

1. The Competition Council may impose an obligation on the undertakings to submit notifications on concentration and *mutatis mutandis* apply the concentration control procedure, provided for in Section III of this Law, even though the aggregate income indicators established in paragraph 1 of Article 10 are not exceeded where it is likely that concentration will result in the creation or strengthening of a dominant position or a substantial restriction of competition in a relevant market.

2. The Competition Council may adopt a separate decision to apply the concentration control procedure only in cases where no more than 12 months have passed from the implementation of the concentration in question.

#### **Article 15. Investigation of Infringements of Concentration Control and Amendment or Revocation of Resolutions on Concentrations Adopted by the Competition Council**

1. Where there are reasonable grounds to believe that the concentration has been put into effect in violation of the requirements of this Law or in breach of the resolutions of the Competition Council, the Competition Council shall carry out an investigation in accordance with the provisions of Chapter Five of this Law.

2. The Competition Council shall have the right to amend or revoke its resolutions on concentrations provided for in paragraph 1 of Article 14 of this Law where such resolution has been adopted based on incorrect or incomplete information submitted by the undertakings participating in concentration or by the controlling persons, which had a decisive influence on the resolution, or where the undertakings or controlling persons have violated the conditions and obligations of the implementation of concentration.

### **CHAPTER III**

#### **UNFAIR COMPETITION**

##### **Article 16. Prohibition of Acts of Unfair Competition**

1. Undertakings shall be prohibited from performing any acts contrary to honest business practices if such acts may be detrimental to the competitive potential of another undertaking, including:

1) unauthorised use of a mark identical or similar to the name, registered trade mark or unregistered well known trade mark or any other reference having a distinguishing feature of another undertaking, if this causes or is likely to cause confusion with that undertaking or its activity, or where it is sought to take undue advantage of the reputation of that undertaking (its mark or reference) or where this may be detrimental to the reputation (mark or reference) of that undertaking, or where it may reduce the distinguishing feature of the mark or reference used by that undertaking;

2) misleading undertakings by providing them with incorrect or unsubstantiated information about the quantity, quality, components, properties of usage, place and

means of manufacturing and price of its goods or goods of another undertaking, or concealing risks associated with the consumption, processing or other usage of those goods;

3) using, transferring, disclosing the information representing a commercial secret of another undertaking without its consent as well as obtaining such information from persons having no right to transfer such information, in order to compete, seeking self-benefit or inflicting damage on that undertaking;

4) proposing that the employees of competing undertaking terminate their employment contracts or refrain from performing all or part of their work-related duties, seeking self-benefit or inflicting damage on that undertaking;

5) imitating the product or product packaging of another undertaking, copying the shape, colour or other distinguishing features of that product or product packaging, if this may be misleading in terms of the identity of the product, or if the acts are intended to take undue advantage by using the reputation of another undertaking;

6) providing incorrect or unsubstantiated information about its own or another undertaking's managing personnel, the employees' skills, the legal, financial or other position of an undertaking, if damage may thereby be inflicted on another undertaking;

7) use of advertising which is considered misleading under the laws of the Republic of Lithuania.

2. It shall not be considered as the use of an identical or similar name, trade mark or reference mark specified in subparagraph 1 of paragraph 1 of this Article when the name or surname of the owner, holder of the qualifying holding or founder is used in the name, trade mark or reference mark and when the undertakings using such a name, trade mark or reference mark have taken measures to prevent misleading customers as to the identity of the undertaking or the goods.

3. The information specified in subparagraph 2 of paragraph 1 of this Article concerning the designation of origin of the goods shall be considered geographical indications provided in any way, characterising the goods as being produced in the

territory of a certain state or a certain region or area of that territory, which is associated with the quality, reputation or other properties of the goods.

4. Persons who have become aware of a commercial secret as a result of their work or any other contractual relations with the undertaking may use this information not earlier than one year after the termination of employment or other contractual relations, unless the laws or the contract provide otherwise.

5. Actions taken with a view to achieving certain functional properties of the goods or their packaging shall not be considered as simulation of the appearance of the goods or the form of their packaging, provided the person taking such actions has taken measures to prevent misleading other undertakings or consumers as to the identity of the manufacturer or the goods.

#### **Article 17. Protection of Rights**

1. An undertaking whose legitimate interests are violated by acts of unfair competition shall be entitled to bring an action before the court seeking:

- 1) termination of the illegal acts;
- 2) recovery of the damages;
- 3) imposition of an obligation to make one or several statements of specific content and form, denying the previously submitted incorrect information or providing explanations as to the identity of the undertaking or its goods;
- 4) seizure or destruction of the goods, their packaging or other means, directly related to unfair competition, unless the infringements can be eliminated otherwise.

2. Organisations representing the interests of undertakings or consumers shall also enjoy the rights specified in subparagraphs 1, 3 and 4 of paragraph 1 of this Article.

3. Liability for the use of misleading advertising shall be established by the laws of the Republic of Lithuania.

4. The Competition Council shall investigate the acts of unfair competition only in cases where these acts violate the interests of the majority of undertakings or consumers. The Competition Council shall impose sanctions for these acts established by law.

## **CHAPTER IV**

### **INSTITUTION CONTROLLING RESTRICTIVE PRACTICES**

#### **Article 18. Competition Council of the Republic of Lithuania**

1. The Competition Council shall be a state institution of the Republic of Lithuania implementing the state competition policy and supervising compliance with this Law.

2. The Competition Council shall be a legal person, having its accounts with the banks and a seal with the Lithuanian State Emblem and its name.

3. The Competition Council shall be governed by the Constitution of the Republic of Lithuania, this and other laws, international treaties to which the Republic of Lithuania is a party, other legal acts as well as the Regulations of the Competition Council approved by the Government.

4. The Competition Council shall be a budgetary institution financed from the Lithuanian state budget.

5. The Law on Budgetary Institutions shall apply to the activity of the Competition Council, unless this Law provides otherwise.

#### **Article 19. Powers of the Competition Council**

1. The Competition Council shall:

1) control the compliance by undertakings and entities of public administration with the requirements of this Law;

2) establish the criteria and procedure for providing definition of a relevant market and determining a dominant position, investigate and define relevant markets, determine the market share of undertakings and their position in the relevant market;

3) provide obligatory instructions to undertakings, including banks and other credit institutions as well as entities of public administration, to submit financial and other documents, including documents containing commercial secrets, and other information required for market investigation or performance of other tasks of the Council;

4) examine the conformity of the legal acts or other decisions adopted by entities of public administration with the requirements of Article 4 of this Law and, if there are grounds, apply to entities of public administration with a request to amend or repeal legal acts or other decisions restricting competition. In case of failure to comply with the requirement, the Council shall have the right to appeal against the decisions of entities of state administration, except for the statutory acts issued by the Government of the Republic of Lithuania, to the Supreme Administrative Court of Lithuania, and against the decisions of entities of municipal administration and other entities of public administration— to the regional administrative court;

5) investigate and consider infringements of this Law and impose sanctions on the violators in the cases and following the procedure provided for by law;

6) appeal to the court for the protection of interests of the State and other persons safeguarded by this Law;

7) adopt legal acts within the scope of its competence;

8) within the scope of its competence, carry out expert examination of draft of laws and other legal acts, submit its conclusions regarding the effect of these acts on competition to the Seimas and the Government of the Republic of Lithuania;

9) exercise other powers provided for by this and other laws.

2. The Competition Council may delegate some of its powers to the Chairperson of the Competition Council or the administration of the Competition Council, except for

the powers to make decisions and examine cases, specified in paragraph 4 of Article 10, paragraph 1 of Article 14 and paragraph 2 of Article 15 of this Law, and to impose sanctions prescribed by this Law and adopt legal acts.

3. The administration of the Competition Council shall be formed to perform the functions of the Competition Council. Its structure and list of staff shall be approved by the Competition Council. The functions of the administration and the administrative staff of the Competition Council shall be laid down in this Law and the Regulations approved by the Competition Council.

#### **Article 20. Composition, Formation and Working Procedure of the Competition Council**

1. The Competition Council shall consist of the Chairperson and four members. The Chairperson of the Competition Council and its members shall be appointed by the President of the Republic on the recommendation of the Prime Minister of the Republic of Lithuania. The Chairperson of the Competition Council and the members of the Competition Council shall be appointed for a term of six years. The same person may be appointed the Chairperson or member of the Competition Council for not more than two consecutive terms of office. When appointing members of the Competition Council for the first time, two members shall be appointed for a term of six years and two members - for a term of three years.

2. The office of the Chairperson and members of the Competition Council may be held by citizens of the Republic of Lithuania who are of sufficiently good repute and have a university degree in law or economics.

3. The Chairperson and members of the Competition Council shall be dismissed from office only:

- 1) at their own request;
- 2) upon the expiry of their term of office;
- 3) upon being elected or appointed to another office;
- 4) upon the entry into force of a court judgement of conviction;

- 5) if instances of material breach of duties are revealed;
- 6) where, by their acts, they discredit the name of the Chairperson or member of the Competition Council;
- 7) for health reasons.

4. Upon the expiry of their term of office, the Chairperson or members of the Competition Council shall continue to perform their duties until the same or other persons are appointed to the respective position. The Chairperson and members of the Competition Council, dismissed from office upon the expiry of their term of office, shall be paid compensation equal to their average monthly salary, except in cases when they are appointed for another term of office.

5. Members of the Competition Council may not, during their term of office, engage in any other activity, except for scientific, educational or creative work upon the approval of the Competition Council.

6. When dealing with issues falling within its competence, the Competition Council shall adopt resolutions. The resolutions shall be adopted by majority vote, with participation of at least three members of the Competition Council, including the Chairperson of the Competition Council. In the event of a tie vote, the Chairperson shall have the casting vote. On the decision of the Competition Council, its resolutions in relation to the investigation of infringements of this Law may be held confidential until a threat to the process of investigation disappears but not later than any actions specified in subparagraphs 1, 2, 3, 4, 5, 7 or 8 of paragraph 1 of Article 26 of this Law regarding the undertakings suspected of committing the infringement of this Law are performed.

7. The working procedure of the Competition Council and rules regulating the procedure of investigation of cases shall be laid down in the Rules of Procedure adopted by the Competition Council.

## **Article 21. Chairperson of the Competition Council**

1. The Chairperson of the Competition Council shall:



- 1) direct the work of the Competition Council;
- 2) represent the Competition Council in the Republic of Lithuania and abroad;
- 3) employ and dismiss the administrative staff of the Competition Council;
- 4) submit annual reports on the activities of the Competition Council to the Seimas and the Government of the Republic of Lithuania;
- 5) perform other functions assigned by the Competition Council.

2. In the Chairperson's absence his duties shall be performed by one of the members of the Competition Council, who shall be appointed by the Chairperson.

3. The Chairperson of the Competition Council or, in his absence, another member of the Competition Council appointed to act on his behalf, shall have the right to participate in meetings of the Government in a deliberative capacity and must voice his comments should the decisions proposed for adoption contradict this Law.

#### **Article 22. Protection of Commercial Secrets**

1. Commercial secrets of undertakings disclosed to the Competition Council and its administrative staff in the course of exercising control over compliance with this Law must be kept confidential and, in the absence of the undertaking's consent, must be used only for the purposes the information was provided.

2. The disclosure of commercial secrets of undertakings by the Competition Council and its administrative staff shall incur liability under law.

### **CHAPTER V**

## **INVESTIGATION OF RESTRICTIVE PRACTICES AND EXAMINATION OF CASES**

### **SECTION FOUR**

## **INVESTIGATION OF RESTRICTIVE PRACTICES**

## **CARRIED OUT BY THE COMPETITION COUNCIL**

### **Article 23. Infringements Investigated by the Competition Council**

1. The Competition Council shall investigate:

1) conformity of legal acts or other decisions adopted by entities of public administration with the requirements of Article 4 of this Law;

2) agreements restricting competition;

3) abuse of a dominant position;

3) implementation of concentration without prior notification or consent or in breach of the established conditions or obligations as well as continuation of concentration during its suspension;

5) unfair competition in the cases provided for in paragraph 4 of Article 17 of this Law;

6) infringements in case of failure to comply with requests to provide information or failure to provide information timely, also in case of provision of incorrect or incomplete information, or, in the cases provided for in this Law, failure to provide information within the established time limit, or obstruction of the authorised officers of the Competition Council carrying out the investigation or non-compliance with sanctions or obligations imposed by the resolutions of the Competition Council as well as obligations assumed by undertakings in accordance with subparagraph 2 of paragraph 2 of Article 30 of this Law.

2. The investigation shall be carried out by the administrative staff of the Competition Council authorised by it (hereinafter - authorised officers).

### **Article 24. Right to Initiate Investigation of Restrictive Practices**

1. The right to request to start investigation of restrictive practices shall be vested in:

- 1) undertakings whose interests have been violated due to restrictive practices;
- 2) entities of public administration;
- 3) associations or unions representing the interests of undertakings and consumers.

2. The Competition Council shall have the right to start investigation on its own initiative by taking a justified decision.

### **Article 25. Submission of an Application for Investigation and Its Examination**

1. The request to carry out an investigation must be submitted in a written application, specifying the facts and circumstances of restrictive practices the applicant is aware of. The application shall be accompanied by the documents confirming the above mentioned facts and circumstances.

2. The Competition Council shall establish general requirements for the data and documents to be provided by an applicant in order to start an investigation of restrictive practices.

3. The Competition Council must examine applications submitted with respect to restrictive practices not later than within 30 days from submission of the application and documents and take a decision to start or to refuse to start an investigation.

4. The refusal to start an investigation shall follow if:

1) the facts specified in the application are immaterial, causing no substantial damage to the interests protected under this Law;

2) investigation of the facts specified in the application is not within the remit of the Competition Council;

3) the facts specified in the application have already been investigated and a resolution has already been adopted on the issue;

4) the applicant has failed to provide, within the time period set by the Competition Council, the data and documents required to initiate an investigation;

5) there are no data available allowing to reasonably suspect an infringement of the Law.

5. The Competition Council shall take a justified decision to investigate restrictive practices.

6. The Competition Council must complete the investigation not later than within five months from the commencement thereof. The Competition Council may, by a justified decision, extend this time limit each time by up to three months.

#### **Article 26. Rights and Duties of the Authorised Officers of the Competition Council in the Process of Investigation**

1. The authorised officers of the Competition Council, carrying out the investigation, shall have the right:

1) to enter and carry out checks in any premises, land and means of transport used by the undertaking;

2) to enter and carry out checks in other premises, land and means of transport, including residential and other premises of heads and employees of the undertaking, if reasonable suspicion arises that documents or any other evidence necessary for investigation and likely to have an influence on proving a serious infringement of Articles 5 or 9 of this Law or Articles 81 and 82 of the EC Treaty are held in such premises, land or means of transport;

3) to examine the documents necessary for investigation (irrespective of the medium on which they are stored), obtain their copies and extracts, be given access to the notes of the employees of the undertaking, related to work activities, also copy the above notes as well as the information stored in computers and on any other media;

4) to seal the premises used by the undertaking wherein documents are held (irrespective of the medium on which they are stored) for the time period and to the extent necessary to carry out checks, performed upon receiving the court authorization, however for not longer than three calendar days;

5) to get oral and written explanations from persons connected with the activity of the undertakings under investigation, request them to arrive in the office of the authorized investigating officer in order to provide explanations;

6) to get data and documents or copies thereof relating to the economic operations of the undertaking under investigation from other undertakings, regardless of their subordination, as well as from entities of public administration;

7) to carry out an inspection (audit) of the economic activity of the undertaking and, on the basis of the inspection material, obtain findings from the institutions responsible for expert examination;

8) to seize any documents and articles having evidential value in the investigation of the case;

9) to enlist the assistance of specialists and experts in carrying out the investigation;

10) acting in compliance with the procedure established by law, to use technical means for investigation purposes;

2. The investigation actions specified in subparagraphs 1 and 2 of paragraph 1 of this Article may be carried out only with the court authorization.

3. For the purpose of maintaining order, the authorized investigating officers of the Competition Council may enlist the assistance of police officers.

4. Before carrying out the actions specified in this Article, the authorised officers of the Competition Council must produce a document issued by the Competition Council confirming their powers, the purpose and time limits of the investigation.

5. While exercising their rights granted by law and the Competition Council, the authorised officers of the Competition Council shall register the investigation actions in writing, i.e. shall draw up documents (acts, records, requests, etc.) the form and the filling in procedure whereof shall be established by the Competition Council.

6. Requests made by the authorised officers of the Competition Council while performing actions provided for in paragraph 1 of this Article shall be obligatory to

undertakings and members of their bodies and administrative staff. Sanctions provided for in laws shall apply for failure to comply with the requests.

7. The authorised investigating officers shall warn the persons providing explanations in writing of their liability for providing false information or refusal to provide information to the Competition Council.

### **Article 27. Appeals against the Actions of the Investigating Officers**

1. Undertakings suspected of having violated the Law on Competition shall have the right to appeal to the Competition Council against the illegal actions of the authorized investigating officers. A complaint shall be lodged not later than within 10 days from the date of performance of the actions appealed against. The Competition Council must take a decision in relation to the complaint within 10 days from the date of receipt thereof.

2. If the undertakings suspected of infringement of the Law on Competition object to the decision of the Competition Council or if the Competition Council fails to make a decision within 10 days, the undertakings shall have the right to lodge a complaint with the Vilnius Regional Administrative Court. The lodgement of a complaint shall not suspend the investigation.

### **Article 28. Interim Measures**

1. In urgent cases, where there is sufficient evidence of infringement of the Law on Competition, the Competition Council, seeking to prevent a substantial or irreparable damage to the interests of undertakings or public interests, shall have the right to apply interim measures necessary for the implementation of the final decision of the Competition Council. The interim measures shall cease to apply upon the implementation of sanctions imposed by the resolution of the Competition Council adopted after the investigation of the case.

2. In cases provided for in paragraph 1 of this Law, the Competition Council shall have the right to apply the following interim measures with respect to the undertaking suspected of infringement of the Law on Competition:

1) to obligate the undertakings to terminate an illegal activity;

2) upon receiving authorization from the Vilnius Regional Administrative Court, to obligate the undertakings to perform certain actions if failure to perform them would result in serious damage to other undertakings or public interests or incur irreparable consequences.

3. Before adopting a resolution to apply interim measures, the Competition Council must give the undertaking suspected of infringement of the Law on Competition an opportunity to provide explanations within the set time limit.

4. The decision of the Competition Council on the application of interim measures may be appealed against to the Vilnius Regional Administrative Court within one month from the date of making the decision. The lodgement of a complaint shall not suspend the application of interim measures.

### **Article 29. Procedure for Issuing Court Authorizations for Performance of Investigation Actions, Application of Interim Measures and Restrictions of Economic Activity**

1. Upon the adoption by the Competition Council of a resolution on the investigation actions as provided for in paragraph 2 of Article 26 of this Law, or on the application of interim measures as provided for in subparagraph 2 of paragraph 2 of Article 28 of this Law, or on restrictions of economic activity as provided for in paragraph 2 of Article 40 of this Law, the authorised officer of the Council shall submit an application to the court for the issue of an authorization for performance of these actions and application of the measures or restrictions. The application shall be submitted to the Vilnius Regional Administrative Court.

2. The application must include the name of the undertaking, the character of the alleged infringement and the intended investigation actions, the applicable interim measures or restrictions of economic activity.

3. A judge of the Vilnius Regional Administrative Court shall examine the application for the issue of a court authorisation for performance of investigation actions and application of interim measures or restrictions of economic activity and shall make a justified decision to satisfy or reject the application.

4. The application for the issue of a court authorisation for performance of investigation actions and application of interim measures or restrictions of economic activity must be examined and the decision thereon must be taken not later than within 72 hours from the moment of filing of the application.

5. If the authorised officer of the Competition Council disagrees with the decision of the judge of the Vilnius Regional Administrative Court to reject the application, he shall have the right to, within seven days, appeal against the judge's decision to the Supreme Administrative Court of Lithuania.

6. The Supreme Administrative Court of Lithuania must investigate the appeal against the decision of the judge of the Vilnius Regional Administrative Court not later than within seven days. The representative of the Competition Council shall have the right to attend the investigation of the appeal.

7. The decision of the Supreme Administrative Court of Lithuania shall be final and shall not be subject to appeal.

8. When considering applications and appeals regarding the issue of an authorisation for performance of investigation actions and application of interim measures or restrictions of economic activity, the courts must ensure confidentiality of the provided information and intended actions.

### **Article 30. Completion of Investigation**

1. The investigation shall be considered completed when the Competition Council, in accordance with the procedure established by law, adopts a decision to



terminate the investigation in relation to the infringement of the Law or complete the investigation in relation to the infringement of the Law.

2. The investigation shall be terminated where:

1) in the course of investigation it transpires that there is no composition of the infringement of the Law;

2) the actions did not result in the significant damage to the interests protected by the law, and the undertaking suspected of the infringement of the Law voluntarily terminates the actions and submits to the Competition Council a written obligation not to perform such actions or to perform actions eliminating the suspected infringement or creating preconditions to avoid it in the future.

3. Obligations submitted in accordance with subparagraph 2 of paragraph 2 of this Article and entered in the resolution of the Competition Council in relation to the termination of the investigation shall be binding on the undertakings.

4. The applicant and the interested parties shall be notified in writing of the decision taken. The operative part of resolutions adopted by the Competition Council pursuant to subparagraph 2 of paragraph 2 of this Article shall be published in the official gazette *Valstybės žinios*.

5. Should new circumstances emerge or if the undertaking fails to comply with the conditions and obligations set on the basis of this Law, the Competition Council shall have the right to reopen the terminated investigation.

**SECTION FIVE**  
**PROCEDURE FOR HEARING**  
**RESTRICTIVE PRACTISES CASES**

**Article 31. Participants in the Proceedings**

1. The following shall participate in the proceedings regarding the infringements specified in Article 23:

- 1) the applicant (the initiator of the investigation);
- 2) the person suspected of infringement of the Law on Competition (the alleged violator);
- 3) on the decision of the Competition Council, other undertakings whose interests are directly related to the case under investigation;
- 4) representatives of entities of public administration, at their request;
- 5) on the decision of the Competition Council, experts, specialists and other persons.

2. persons SPECIFIED in subparagraphs 1, 2 and 3 of paragraph 1 of this Article shall hereinafter be referred to as parties to the proceedings.

3. The parties to the proceedings may be represented by their representatives and lawyers.

### **Article 32. Notification regarding the Proceedings**

The parties to the proceedings shall be notified in writing of the findings of the authorised officers regarding the restrictive practices, the place and time of hearing of the case and shall be offered to submit their written comments. The Competition Council may notify of the hearing of the case through the mass media.

### **Article 33. Persons Attending the Hearing of the Case at the Session of the Competition Council**

The case shall be heard in the presence of the parties to the proceedings and other persons participating in the case. In the absence of the parties to the proceedings,

the case may be heard only where information is available that the said parties have been timely notified of the place and time of the hearing and have been given an opportunity to provide explanations and familiarise themselves with the findings of the investigation.

**Article 34. Right to Be Heard, Provide Explanations and Familiarise Oneself with the Investigation Material**

1. At the stages of the investigation and hearing of the case the parties to the proceedings shall have the right to be heard and to provide explanations both in writing and orally. Upon completion of the investigation, the parties to the proceedings shall be presented with the written findings of the authorised officer and shall be provided access to the documents of the case, except documents containing commercial secrets of another undertaking. In such cases, the consent of this undertaking shall be required.

2. The parties to the proceedings and other persons participating in the case shall have the right to make an application to the competition council at any stage of the investigation and hearing of the case requesting protection of their commercial secrets. the competition council or its authorised officer must make a justified decision on the protection of commercial secrets and notify the applicant thereof. the applicant may be obligated to produce, within the set time limit, an extract of the document omitting commercial secrets, which shall be included in the case.

**Article 35. Public Hearing of Cases**

The hearing of cases at the sessions of the Competition Council shall be public. The Competition Council may, on its own initiative or at the request of the alleged violator or any other interested person, announce a closed hearing of the case where it is necessary to protect the state secrets or commercial secrets of undertakings.

**Article 36. Resolutions of the Competition Council Adopted upon Completion of Hearing of the Case**

1. Upon completing the hearing of the case, the Competition Council shall have the right to adopt a resolution:

- 1) to impose sanctions provided for by this Law;
- 2) to refuse to impose sanctions where there is no legally established basis;
- 3) to terminate the case in the absence of infringement of the Law;
- 4) to remand the case for a supplementary investigation.

2. The resolution of the Competition Council must include the circumstances of the infringement of this Law, evidence of guilt, explanations provided to the Competition Council by the violator, applicant and other persons as well as their assessment, the motives and legal basis for the adopted resolution.

3. The resolution of the Competition Council must be based only on those conclusions and facts and circumstances of the investigation with respect to which the person suspected of the infringement of the Law on Competition had been afforded an opportunity to provide explanations.

4. The resolution of the Competition Council adopted pursuant to this Article may be amended or repealed only by the court.

### **Article 37. Announcement of Resolutions of the Competition Council**

1. The Competition Council's resolution or its extract shall be delivered to the parties to the proceedings.

2. The operative part of resolutions adopted by the Competition Council pursuant to Article 36 of this Law shall be published in the official gazette *Valstybės žinios*.

## **SECTION SIX JUDICIAL INVESTIGATION OF COMPLAINTS IN RELATION TO THE RESOLUTIONS OF THE COMPETITION COUNCIL**

### **Article 38. Appeals against the Resolutions of the Competition Council**

1. The undertakings as well as other persons who believe that their rights, protected by this Law, have been violated shall have the right to appeal to the Vilnius Regional Administrative Court against the resolutions of the Competition Council. The parties to the proceedings shall have the right to appeal against the resolutions of the Competition Council adopted pursuant to Article 36 of this Law.

2. A written complaint shall be lodged not later than within 20 days after the delivery of the resolution or publication of its operative part in the official gazette *Valstybės žinios*.

3. Unless the Vilnius Regional Administration Court decides otherwise, the lodgement of a complaint shall not suspend the implementation of the resolutions of the Competition Council.

### **Article 39. Decision of the Court**

Upon investigation of the complaint against the resolution of the Competition Council, the court shall take one of the following decisions:

- 1) to leave the resolution as it stands and to reject the complaint;
- 2) to revoke the resolution or its individual sections and to remand the case to the Competition Council for a supplementary investigation;
- 3) to revoke the resolution or its individual sections;
- 4) to amend the resolution on concentrations, application of sanctions or interim measures.

## CHAPTER VI LIABILITY FOR INFRINGEMENT OF THE LAW ON COMPETITION

### **Article 40. Sanctions Imposed on Undertakings**

1. Upon establishing that undertakings have performed actions prohibited under this Law or have otherwise infringed this Law, the Competition Council, following the principles of impartiality and proportionality, shall have the right:

1) to obligate the undertakings to terminate illegal activity, to perform actions restoring the previous situation or eliminating the consequences of the infringement, including the obligation to terminate, amend or conclude contracts, also to set the time limits and conditions for meeting the above obligations;

2) to obligate the undertakings or controlling persons, who have implemented concentration resulting in the establishment or strengthening of a dominant position or a substantial restriction of competition in a relevant market without notifying the Competition Council or getting its permission, also in cases provided for in paragraph 2 of Article 15 of this Law, to perform actions restoring the previous situation or eliminating the consequences of concentration, including obligations to sell the enterprise or part thereof, the assets of the undertaking or part thereof, shares or part thereof, to reorganise the enterprise, to terminate or amend contracts as well as to set the time limits and conditions for meeting the above obligations;

3) to impose fines on undertakings fixed by this Law.

2. Upon receiving an authorisation from the Vilnius Regional Administrative Court, the Competition Council may, by its resolution, establish the following restrictions of economic activity of undertakings which fail to comply with the imposed sanctions specified in paragraph 1 of this Article: to temporarily suspend export and import operations, bank operations, the validity of the permit (licence) to engage in certain economic activity. The resolutions of the Competition Council shall be binding on the institutions which may apply such restrictions and must be implemented without delay. The restrictions shall be lifted after the implementation of the sanctions imposed by the Competition Council.

3. Undertakings may incur liability for infringement of this Law not later than within three years from the date of the infringement, and in case of a continuous infringement - from the date of performance of the last actions.

#### **Article 41. Fines**

1. A fine of up to ten per cent of the gross annual income in the preceding business year shall be imposed on undertakings for prohibited agreements, abuse of a dominant position, implementation of a notifiable concentration without permission of the Competition Council, continuation of concentration during the period of its suspension, also infringement of concentration conditions or mandatory obligations established by the Competition Council.

2. A fine of up to three per cent of the gross annual income in the preceding business year may be imposed on undertakings for the acts of unfair competition investigated by the Competition Council.

3. A fine of up to one per cent of the gross annual income in the preceding business year may be imposed on undertakings for not providing information required for the investigation or examination of concentration, also for providing incorrect and incomplete information in cases stipulated by this Law, for obstructing the officers of the Competition Council from entering and carrying out checks in the premises, land and means of transport of the undertakings, inspecting or seizing any documents and articles having evidential value in the investigation of the case, for damaging or breaking the seal affixed in accordance with subparagraph 4 of paragraph 1 of Article 26 of this Law by the officers of the Competition Council.

4. A fine of up to five per cent of the average gross daily income in the preceding business year may be imposed on undertakings for each day of commission (continuation) of infringement in the event of failure to comply or failure to comply in good time with the obligations of the Competition Council to terminate illegal activity, to perform actions restoring the previous situation or eliminating the consequences of the infringement, also in the event of failure to timely comply with the instructions to provide information and failure to meet the assumed obligations in cases provided for by this Law.

## **Article 42. Imposition of Fines and Setting Their Amount**

1. The amount of fines imposed on undertakings shall be differentiated taking into consideration:

- 1) the gravity of the infringement;
- 2) the duration of the infringement;
- 3) the circumstances mitigating or aggravating the liability of the undertaking;
- 4) (Repealed on 1 May 2004);
- 5) the influence of each undertaking in the commission of the infringement, where the infringement has been committed by several undertakings.

2. Voluntary prevention of the detrimental consequences of the infringement after the commission thereof by the undertakings, assistance to the Competition Council in the course of investigation, compensation for the losses, elimination of the damage caused, voluntary termination of the infringement, non-implementation of restrictive practices, acknowledgement of the material circumstances established by the Competition Council in the course of investigation, also the fact that actions constituting the infringement were determined by the actions of the authorities as well as serious financial difficulties of the undertaking shall be considered as mitigating circumstances.

3. Obstruction of the investigation, concealment of the committed infringement, failure to terminate the infringement notwithstanding the obligation by the Competition Council to discontinue illegal actions or repeated commission of the infringement for which the undertakings have already been imposed sanctions provided for in this Law shall be considered as aggravating circumstances.

4. (Repealed on 25 April 2009)

5. The Government shall pass a resolution approving the procedure for setting the amount of fines.

## **Article 43. Exemption from Fines**



1. The undertaking which is a party to a prohibited agreement between competitors shall be exempted from fines provided for in respect of this infringement upon providing to the Competition Council all the information relating to such an agreement if all the following conditions are satisfied:

1) the undertaking provides information prior to the beginning of the investigation of the agreement;

2) the undertaking is the first of the parties to the prohibited agreement to provide such information;

3) the undertaking provides all the information available to it regarding the prohibited agreement and co-operates with the Competition Council in the course of investigation;

4) the undertaking has not been the initiator of the prohibited agreement and has not induced other undertakings to participate in such an agreement.

2. (Repealed on 25 April 2009)

3. Having completed the investigation and when adopting the final resolution on the infringement, the Competition Council shall decide whether the conditions specified in this Article have been met and the undertaking qualifies for exemption from fines.

#### **Article 44. Recovery of Fines**

1. An undertaking must pay the fine imposed by the Competition Council into the State budget not later than within three months from the date of receipt of the resolution.

2. Upon a justified request of the undertaking, payment of a fine or part thereof may be postponed, on the decision of the Competition Council, for up to six months.

3. The fine not paid by the undertaking shall be recovered to the State budget. The resolution of the Competition Council shall be submitted to the bailiff for execution in accordance with the procedure established by the Code of Civil Procedure. The

resolution may be submitted for execution not later than within three years from the date of its adoption.

#### **Article 45. Administrative Liability**

Infringement of this Law shall incur administrative liability established by the laws of the Republic of Lithuania.

#### **Article 46. Compensation for Damage**

1. Undertakings which violate this Law must compensate for damage caused to other undertakings or natural and legal persons in accordance with the procedure established by the law.

2. Damage caused to undertakings by illegal actions of the Competition Council or its officers shall be compensated in accordance with the procedure established by the law.

## **CHAPTER VII**

### **APPLICATION OF THE EUROPEAN UNION COMPETITION RULES**

#### **Article 47. Authorised Institution**

1. The Competition Council shall be the institution authorized to apply the EU competition rules, the supervision of compliance whereof, according to the European Union competition law, is entrusted to the national competition authority.

2. In performing functions assigned to it in accordance with paragraph 1 of this Article, the Competition Council shall act in accordance with the procedure set forth by this Law.

**Article 48. State Aid**

1. The Competition Council shall be a coordinating institution in matters related to State aid subject to the European Union State aid rules.

2. Following the procedure set forth by the Government of the Republic of Lithuania, the Competition Council shall perform expert examination of the State aid projects referred to in paragraph 1 of this Article, submit conclusions and recommendations to State aid providers, accumulate information on State aid granted to undertakings of Lithuania and submit such information to the European Commission and other concerned institutions.

3. The Register of State aid referred to in paragraph 1 of this Article, including the *de minimis* aid, shall be maintained by the Competition Council.

**Article 49. Police Assistance and Issue of Court Authorisations for Investigation Actions**

1. For the purpose of maintaining public order and possible use of coercion, officers authorised by the European Commission performing an investigation in accordance with the EU competition rules or officers authorised by the Competition Council assisting the authorized officers of the European Commission in carrying out the checks may enlist the assistance of police officers.

2. The Vilnius Regional Administrative Court shall issue a court authorization for the possible use of coercive measures in the case set forth in Article 20 of Council Regulation (EC) No 1/2003 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (hereinafter referred to as Council Regulation (EC) No. 1/2003).

3. The Vilnius Regional Administrative Court shall issue court authorizations for the inspections conducted by the European Commission and the possible use of coercive measures in the case set forth in Article 21 of Council Regulation (EC) No 1/2003.

4. An application for the issue of a court authorization shall be filed by the European Commission or the Competition Council.

**Article 50. Judicial Investigation of Competition Cases**

1. An undertaking whose legitimate interests have been violated by acts performed in contravention of Articles 81 or 82 of the Treaty or other restrictive practices prohibited by this Law shall be entitled to bring an action before the Vilnius Regional Court seeking:

1) termination of the illegal acts;

2) recovery of the damages;

2. Upon receipt of the claim related to the application of articles 81 or 82 of the treaty, the court shall notify thereof the European Commission and the Competition Council. In this case, the European Commission and the Competition Council shall have the rights specified in paragraph 2 of article 50 of the Code of Civil Procedure.

3. A copy of the decision (ruling) adopted in the case in which Articles 81 or 82 of the Treaty were applied shall, immediately after the publication of the decision, be forwarded to the European Commission and the Competition Council.

4. The proceedings may be reopened when it transpires that after the adoption of the court decision (ruling) in which Articles 81 or 82 of the Treaty applied to the agreements, decisions or practices, the European Commission adopts a decision on the application of the said Articles to the same agreements, decisions or practices, and the effects of the application differ substantially.

5. For the purpose of investigation of the case in the Vilnius Regional Administrative Court, paragraphs 2, 3 and 4 of this Article shall apply *mutatis mutandis*.

*I promulgate this Law passed by the Seimas of the Republic of Lithuania.*

PRESIDENT OF THE REPUBLIC

**Annex to  
the Republic of Lithuania  
Law on Competition**

**EU LEGAL ACT IMPLEMENTED BY THIS LAW**

Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (OJ 2004 *special edition*, Chapter 8, Volume 2, p. 205).

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